STATE OF MICHIGAN

COURT OF APPEALS

GAIL JACKSON,

Plaintiff-Appellant,

v

MCNALLY FOOD SERVICES, CO., d/b/a MCNALLY'S HOMESTYLE DELI, a/k/a MCNALLY'S EPH,

Defendant-Appellee.

UNPUBLISHED
June 19, 2003

No. 239919
Wayne Circuit Court
LC No. 01-110882-NO

Before: Owens, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals as of right trial court orders granting defendant's motion for summary disposition and denying plaintiff's motion for reconsideration. We affirm.

Plaintiff contends that the trial court erred in granting defendant's motion for summary disposition. Generally, we review de novo a trial court's ruling on a motion for summary disposition. *Haliw v Sterling Heights*, 464 Mich 297, 301; 627 NW2d 581 (2001). In reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), we consider "the affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion."[1] *Id.* at 302. "Summary disposition may be granted if the evidence demonstrates that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Id.*

It is well established that a prima facie case of negligence requires proof of four elements: a duty, breach of that duty, causation, and damages. *Jones v Enertel, Inc*, 254 Mich App 432, 436-437; 656 NW2d 870 (2002). "The duty that a possessor of land owes to another

[1] Although defendant moved for summary disposition pursuant to both MCR 2.116(C)(8) and MCR 2.116(C)(10), the trial court did not state which court rule it relied on in granting defendants' motion. Because the trial court considered evidence beyond the pleadings, we treat the instant matter as if the trial court relied solely on MCR 2.116(C)(10). *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

person who is on the land depends on the latter person's status." *Hampton v Waste Mgmt of Michigan, Inc*, 236 Mich App 598, 603; 601 NW2d 172 (1999). "The status of a person on land that person does not possess will be one of the following: (1) a trespasser, (2) licensee, or (3) an invitee." *Id*.

Here, there is no dispute that plaintiff was an invitee. Generally, "a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, a "premises possessor is not required to protect an invitee from open and obvious dangers . . . ." *Id.* at 517. The question of whether a condition is "open and obvious depends on whether it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection." *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997). On the other hand, if there are "special aspects" to the open and obvious condition that present an "unreasonably high risk of severe harm" or the condition is "effectively unavoidable," the premises possessor may not avoid liability under the doctrine. *Lugo, supra* at 519. The *Lugo* Court illustrated such special aspects by referencing an unguarded thirty foot deep pit in the middle of a parking lot (unreasonably high risk of severe harm) and standing water at the only exit of a commercial building (effectively unavoidable). *Id*. at 518, 520.

Here, we agree that reasonable minds could not differ in finding that the "danger" presented by the steps leading into defendant's premises was open and obvious. Moreover, this condition fell well short of creating an unreasonable risk of harm. In addition, although the evidence did not indicate that there was another exit to the building, the condition was not "unavoidable" because the mere exercise of reasonable care in exiting the building plainly would have prevented an injury. In other words, the instant matter is distinguishable from a situation where the steps were completely missing or covered in ice. Accordingly, the trial court did not err in granting defendant's motion for summary disposition. *Lugo, supra*; *Haliw, supra.*

Plaintiff also contends that the trial court erred in denying her motion for reconsideration. We review a trial court's ruling on a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Id.* Here, plaintiff's motion for reconsideration merely presented the same issues previously argued before the trial court. MCR 2.119(F)(3). Moreover, although the general rule is that "summary disposition is premature if granted before discovery on a disputed issue is complete," summary disposition may be granted if "discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion." *Prysak v RL Polk Co*, 193 Mich App 1, 11; 483 NW2d 629 (1992). In light of plaintiff's concession that the photographs fairly depicted the condition of the steps, it is highly unlikely that further discovery would have supported plaintiff's contention. Consequently, the trial court did not abuse its discretion in denying plaintiff's motion for reconsideration. *Id.*

Affirmed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Christopher M. Murray